

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DIVISION

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4 MIGUEL ORTEGA, BENJAMIN)

5 ORTEGA, A Minor, By And Through His)

6 Guardian Ad Litem, ANA ROSA ORTEGA,)

7 Plaintiffs,)

8 vs.) No. C 07-02659 JCS (ADR)

9 CITY OF OAKLAND, OAKLAND)

10 POLICE DEPARTMENT, WAYNE)

11 TUCKER, In His Capacity As The Police)

12 Chief Of The City Of Oakland, RAMON J.)

13 ALCANTAR, Individually And In His)

14 Capacity As A Police Officer For The)

15 City Of Oakland, Does 1 through 200,)

16 Defendants.)

17 _____)

18
19 Deposition of EDUARDO ORTEGA, taken on behalf

20 of the Defendants, at One Frank H. Ogawa

21 Plaza, 6th Floor, Oakland, California 94612,

22 beginning at 2:13 p.m. and ending at

23 3:31 p.m., on Tuesday, April 22, 2008, before

24 Karen Tamiko Kobayashi, CSR No. 11657.

1 APPEARANCES:

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3 FOR THE PLAINTIFFS:

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19 FOR THE CO-DEFENDANT:

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1 A. Uh-huh.

2 Q. -- that day?

3 A. Uh-huh.

4 Q. And he was there with Benjamin?

5 A. No. I don't know.

6 Q. Okay. Was Benjamin -- did Benjamin come to
7 the house -- at your house around noon that day?

8 A. Don't remember.

9 Q. Okay. Do you remember when -- so after
10 Miguel said this to you, did he leave?

11 A. Yes.

12 Q. Okay. And did you leave with him?

13 A. No.

14 Q. Okay. Did you -- when was the first time
15 that day that you saw Benjamin Ortega?

16 A. Was after the parade over there on 62nd,
17 coming back from the parade.

18 Q. He was coming back from the parade?

19 A. Yeah.

20 Q. Okay. And who was with Benjamin coming back
21 from the parade?

22 A. When I see him, he was by himself coming on
23 the other block. We was there standing and then
24 another block on 62nd. And this intersection, he was
25 coming -- walking -- we was over here (indicating). I

10

1 Q. And International. Okay.

2 And you said you saw him coming towards you.
3 Do you know where he was coming from?

4 A. He was coming for -- for the parade from --
5 really I don't know where he coming from.

6 Q. Okay. That's fair.

7 And was he crossing a street?

8 A. He -- when I see him, he was crossing the
9 street.

10 Q. And what street was that he was crossing?

11 A. International. He was already on 62nd. But
12 he was crossing International to the side where we
13 was.

14 Q. Okay. And you were -- so you were on the
15 corner of 62nd and International?

16 A. Uh-huh.

17 Q. Who was there with you?

18 A. It was -- I don't remember the other person.
19 But there was a lot of person. It was me, Miguel,
20 Cesar, Jaime, my wife, my cousin, Israel.

21 Q. Do you know how to spell that?

22 A. Isra, like Isra, Israel. E-c-r-n-a (sic) --
23 Israel.

24 Q. Okay.

25 MR. JACOBSEN: It's like Israel.

1 THE WITNESS: Israel, yeah.

2 MR. VOSE: Q. Oh, Israel.

3 A. Israel. It was more people, but I don't
4 remember names.

5 Q. Okay. Now, you said you first noticed
6 Benjamin when he was crossing International --

7 A. Uh-huh.

8 Q. -- correct? Okay. And when he was crossing
9 International, was he carrying anything?

10 A. Yes. He was carrying a flag --

11 Q. Okay.

12 A. -- a Mexican flag.

13 Q. A Mexican flag?

14 A. Yeah.

15 Q. And what -- why were you at the corner of
16 62nd and International at that time?

17 A. Because my cousin live right there on 62nd
18 and International, like a house right there. All the
19 time we stand back there every year. And we got a
20 parade. We go to the corner to watch the cars
21 cruising around --

22 Q. Okay.

23 A. -- coming back for the parade. You know,
24 they cruise around.

25 Q. Okay.

1 A. They got the nice cars, sport cars.

2 Q. Okay.

3 A. We do every year that.

4 Q. Okay. And the cousin's house that's on 62nd
5 Avenue, which cousin is that?

6 A. My cousin, Javier.

7 Q. Javier?

8 A. Javier Negrete.

9 Q. N-e-g-r-e-t-e?

10 A. Negrete.

11 Q. Okay. And how long had you been at the
12 corner when you saw Benjamin coming across
13 International?

14 A. I really don't remember 'cause I don't know.
15 Like one hour or more. I wasn't paying attention to
16 my watch. But I was there.

17 Q. So you'd been there for awhile?

18 A. For awhile, yeah.

19 Q. Okay. That's fair.

20 Now, when you saw -- strike that.

21 At some point you noticed a police car
22 approach Benjamin; is that correct?

23 A. Yes.

24 Q. Okay. And when you first noticed that police
25 car, what street was it on?

1 direction was the car heading when it turned onto
2 International? Was it heading towards downtown or --

3 A. To downtown.

4 Q. Towards downtown.

5 And was the car, then, going in the same
6 direction as the traffic for that side of
7 International?

8 A. No.

9 Q. It was in the opposite direction?

10 A. Opposite direction of traffic.

11 Q. Okay. When the car pulled up, where was
12 Benjamin Ortega in terms of coming across
13 International?

14 A. He was crossing -- he almost, like, halfway
15 close to the police car when he was coming --

16 Q. Okay.

17 A. -- crossing the street.

18 Q. And did you hear either of the officers say
19 anything to Benjamin when they pulled up?

20 A. Yes.

21 Q. Which officer was that? When I say "Which
22 officer," there was an officer driving the car and
23 there was an officer that was a passenger in the car.
24 Did you hear either of the officers say anything to
25 him?

1 A. I heard the officer say "Move up -- you
2 better move up faster before I get the flag and shove
3 it in your ass."

4 Q. Okay. And which officer said that?

5 A. No. I can't remember.

6 Q. Okay. And was the -- where was the car in
7 relation to the corner that you were standing on?

8 A. The car was like -- we was on the corner
9 right here (indicating). He was right there to -- to
10 us on the wrong way because the way we was, it was the
11 traffic going to San Leandro.

12 Q. Right.

13 A. He was in that -- in the wrong -- opposite
14 way. We was on the corner -- on this corner
15 (indicating), this -- where the stoplight was.

16 Q. So if I can restate what you've said.

17 A. Yeah.

18 Q. You were standing on the corner on the side
19 of International where the traffic heads towards
20 San Leandro?

21 A. Yeah.

22 Q. And the police car came out of the parking
23 lot on the same corner you were on --

24 A. Yeah.

25 Q. -- and turned into the opposite direction of

1 traffic and stopped fairly close to where you were
2 standing.

3 Is that a fair assessment?

4 A. Yeah.

5 Q. Okay. So you were closer to the driver than
6 the passenger --

7 A. Yeah.

8 Q. -- of the car? Okay. Do you remember if the
9 driver's window was open?

10 A. Yeah. It was open.

11 Q. Okay. And when the officer -- and I know you
12 said you don't know which officer it was. When the
13 officer said what he said to Benjamin, what did
14 Benjamin do?

15 A. Benjamin don't say nothing.

16 Q. Did he --

17 A. He continue walking.

18 Q. He continued walking.

19 And did he continue walking up to the corner
20 of -- the corner of International and 62nd where you
21 were standing?

22 A. Yeah.

23 Q. Okay. And did he say anything that you
24 remember to the officer?

25 A. Don't remember.

1 Q. Okay. Did anyone in the group that you were
2 standing with say anything to the officers?

3 A. Yeah, my cousin, Miguel.

4 Q. And what did Miguel say?

5 A. Said "Don't talk to my brother like that."

6 Q. Okay. And what did the officers say, if
7 anything?

8 A. I really don't remember. But they were --
9 started like -- not, like, arguing. Talking, like,
10 back and forth because we was lot of people. It was
11 crowded right there where we was standing.

12 Q. Uh-huh.

13 A. They started talking back. And then the
14 police say, like, to everybody "Go back to the house,
15 whatever. Go -- go home," something like that. I
16 don't remember, really.

17 Q. Uh-huh.

18 A. And then they -- we was -- we walked to my
19 cousin house. And the cop continued following me to
20 the -- to my cousin house.

21 Q. Okay. So there was this verbal exchange --

22 A. Everybody exchange, yeah.

23 Q. -- between the officers and Miguel?

24 A. Miguel.

25 Q. How long did that last?

1 A. Exactly I don't remember.

2 Q. Sure.

3 A. But, like, couple minutes.

4 Q. Couple of minutes?

5 A. Couple of minutes.

6 Q. Okay. And then what did -- what did you do
7 at that point?

8 A. We went back to my cousin house in 62nd.

9 Q. Okay.

10 A. It's the first house on 62nd right there on
11 the left.

12 Q. Okay. So did the entire group walk back
13 there?

14 A. Yeah.

15 Q. Okay. And you said that's a short -- fairly
16 short distance?

17 A. Fairly, yeah.

18 Q. So it took a short amount of time to get
19 there?

20 A. Less than one minute to make it over there.

21 Q. Okay. Now, did you observe the officers
22 while you were walking back to the house?

23 A. Uh-huh.

24 Q. Okay. Where were the officers?

25 A. The officers turn to 62nd --

1 Q. Okay.

2 A. -- right there where we was.

3 Q. Okay. So they turned down 62nd Avenue?

4 A. Yeah.

5 Q. And they followed you --

6 A. To the house.

7 Q. To the house?

8 A. (Witness nods head.)

9 Q. The -- were you in front of the officers or
10 behind the officers?

11 A. In front of the officer, in front of the car.

12 Q. Okay. And where was Benjamin Ortega at this
13 time, if you remember?

14 A. I don't remember.

15 Q. Okay. What about Miguel Ortega, do you
16 remember seeing Miguel Ortega heading back to the
17 house?

18 A. Everybody went back to the house -- Miguel
19 and Benjamin. But I really don't -- when everybody
20 was walking, I don't know whether he was on the right,
21 the left side. Understand?

22 Q. Okay.

23 A. We was walking. Cops was going slow on
24 patrol.

25 Q. Okay. So the police car was going slowly?

1 A. Slowly.

2 Q. Okay. When you arrived back at your cousin's
3 house on 62nd Avenue, where did you go?

4 A. Right there in the porch.

5 Q. So you walked up onto the porch?

6 A. Yeah. I was on the porch right there,
7 standing right there on the porch.

8 Q. And did you see where Benjamin went?

9 A. Inside right there. The porch is right there
10 inside the -- the front yard right there. The
11 porch -- everybody was there.

12 Q. So Benjamin went into the front yard of the
13 house?

14 A. Yeah.

15 Q. Okay. And did you -- where did you see --
16 if -- well, shouldn't say -- did you see where Miguel
17 went?

18 A. Yeah. He went in -- I think he went inside
19 the house.

20 Q. And did you see -- or where were the officers
21 at this point?

22 A. This point, they pull out there. And then I
23 don't remember what I said. But they said something
24 to us. And then they leave. And they -- they went;
25 away.

1 Q. Okay.

2 A. And then later they come back when -- back
3 up.

4 Q. So the officers -- the officers left --

5 A. Yeah.

6 Q. -- the area?

7 A. Yeah.

8 Q. Okay. And did you see what direction they
9 headed in when they left the area?

10 A. I don't remember.

11 Q. Did they continue down 62nd Avenue? Do you
12 remember?

13 A. Huh-uh.

14 Q. Did they turn around and go back towards
15 International?

16 A. I really don't remember. But -- but when
17 they -- they went around. They went straight, went
18 around because I -- really I don't remember that. But
19 they went back to the parking lot where they was.

20 Q. They went back to the parking lot?

21 A. Back to the parking lot.

22 Q. Okay. And what was Benjamin doing at this
23 point?

24 A. He was there in the front yard. Everybody --
25 we was chilling, talking.

1 Q. Okay. And you said, then, the officers
2 returned at some point?

3 A. Some point.

4 Q. How long from the time the officers went back
5 to the corner to the parking lot to the time they
6 returned to your cousin's house? How long a period of
7 time was that?

8 A. It's a couple, like -- really, like, a couple
9 minutes.

10 Q. Couple minutes.

11 And when they returned, did the officers come
12 by themselves?

13 A. Nope.

14 Q. Okay. Did they come with other police
15 officers?

16 A. Uh-huh.

17 Q. Were those police officers on foot or in
18 vehicles?

19 A. Vehicles.

20 Q. Okay. Do you remember how many --

21 A. Like --

22 Q. -- vehicles?

23 A. Not really. But first, it was a big black
24 Excursion and then a lot of police cars. Was
25 undercover cops. They got out of the truck. And then

1 everybody got right there where we was right there in
2 front of the yard. All the cops got out of the cars.

3 Q. So some officers came -- arrived in a black
4 Ford Excursion?

5 A. Ford Excursion.

6 Q. Okay. And then some other officers arrived
7 in regular patrol cars?

8 A. Regular patrol cars.

9 Q. Okay. And did you see the patrol car that
10 had the officers in it that had talked to Benjamin
11 down at the corner?

12 A. Yeah.

13 Q. Okay. When those officers arrived, what did
14 they do?

15 A. They do? They -- they went in front of the
16 yard. They started, like -- like, talking to Miguel.
17 Miguel was inside the back door. They start talking
18 to Miguel and to Benjamin. And then I think the
19 officer -- one of the officer say, like -- I really
20 don't remember.

21 My cousin say "At least my mom take care of
22 me," something like that. And then he got so mad.
23 And then he went inside -- inside the yard where we
24 was inside the yard. They went like that. A lot of
25 cops went inside. We just moved back when they --

1 they grabbed Benjamin.

2 Q. Now, when the -- when these two officers, the
3 ones that had talked to Benjamin at the corner,
4 arrived, do you remember where they parked their car?

5 A. No.

6 Q. Okay. Was it near your cousin's house?

7 A. It was in the front of the house, right
8 there.

9 Q. So in the front of the house --

10 A. Front of the house.

11 Q. -- on the street?

12 A. Yeah. I don't know how much square footage.
13 But it was in the front of the house.

14 Q. Okay. That's fair enough.

15 Did the officers get out of the car or remain
16 in the car?

17 A. Everybody got out of the car.

18 Q. Okay.

19 A. All the officers got out of the car.

20 Q. When -- and then you said that they started
21 talking to Miguel?

22 A. To Miguel.

23 Q. Okay. And where was Miguel at that point?

24 A. Inside the door of the house in -- in the
25 porch. The porch got, like, the door. He was in --

1 inside the house.

2 Q. Okay. So inside of the front door of the
3 house?

4 A. Yeah.

5 Q. There's like a -- is there like a screen
6 door?

7 A. Screen door, yeah.

8 Q. Okay. What were the officers saying to
9 Miguel?

10 A. Got like "Come out. Why you hiding,"
11 something like that. That was what they saying. And
12 then they was going back and question. But all cops
13 was, like, ready to, like, grab everybody. And then
14 Miguel stay inside the door.

15 And then when Benjamin say something back to
16 the officers, like, "At least my mom care about us,"
17 something like that, the -- the Hispanic officer --

18 Q. Uh-huh.

19 A. -- grab Benjamin and put in the floor. Ugly.
20 And then nobody can do nothing because all the cops
21 rush to everybody who was there.

22 Q. Okay.

23 A. And then Miguel was inside the screen door.

24 And he come out, like, "Leave my brother alone. Leave
25 my brother alone." And then they grab Miguel, boom,

1 drop the -- drop him with the stairs, drop him down.

2 And I don't remember which officer did to Miguel. But

3 I not -- I remember who did it to -- to Benjamin.

4 Q. Okay. The officer that -- now, when Benjamin

5 said -- and I know you don't remember exactly what he

6 said, but something like "At least my mama cares about

7 me" or something like that. Where was the officer

8 when he said that to him?

9 A. He was right there in the -- the -- in the

10 gate, in the -- there's a little -- like a little --

11 like a little door right there.

12 Q. Okay.

13 A. He was there. He was coming inside the house

14 right there almost inside the property.

15 Q. Okay.

16 A. Close --

17 Q. So he was at the front gate by the sidewalk?

18 A. Almost inside.

19 Q. Inside the front gate?

20 A. Yeah.

21 Q. How far away was Benjamin from him, if you

22 have an idea?

23 A. Like couple feets (sic), really.

24 Q. Okay. And so -- and then that officer, you

25 said, grabbed Benjamin?

1 A. (Witness nods head.)

2 Q. Okay. How did he -- how did he grab
3 Benjamin?

4 A. He grab it like -- like he grab -- like he
5 grab it, like, his hand. He bend it and -- and drop
6 it to the floor.

7 Q. Okay. So the officer grabbed Benjamin
8 with -- do you remember if it was with his right or --
9 and I'm talking about the officer -- right or left
10 hand?

11 A. I do not remember --

12 Q. Okay.

13 A. -- which hand it was.

14 Q. And he grabbed -- what part of Benjamin, if
15 you remember, did he grab?

16 A. 'Cause he got it, like, right here
17 (indicating). When he tried to grab Benjamin, he grab
18 it for right here (indicating) and grab his hand, put
19 in the floor.

20 Q. So the officer grabbed -- it sounds like
21 you're saying the officer grabbed Benjamin with one
22 hand by his front of his neck?

23 A. Yeah --

24 Q. Okay.

25 A. -- together because it was, like, more people

1 right -- grab it right there --

2 Q. Okay.

3 A. -- to grab Benjamin. He grab Benjamin.

4 Q. Uh-huh.

5 A. And he put -- and then he bend his hand and
6 put in floor.

7 Q. So he grabbed his neck with one hand. And
8 then he grabbed his arm or his hand or wrist?

9 A. He do a funny move, really, like, to -- how
10 he grab it, how he put on the floor. I don't know
11 how. But he grab it like that (indicating), put on
12 the floor.

13 Q. Okay. So did he -- and then this is
14 important. This is a good -- this is important
15 detail. So I'm sorry if the questions are a little
16 repetitive. I'm just trying to make sure I understand
17 what you're saying.

18 The officer grabbed Benjamin by the throat
19 with one hand. And then -- and I'm not trying to say
20 this is what you said.

21 Did the officer then at the same time grab
22 him with his other hand -- grab Benjamin with his
23 other hand?

24 A. I really don't remember.

25 Q. Okay. But somehow he grabbed ahold of

1 Benjamin. And did he turn him around?

2 A. He turn him around. I don't know how he turn
3 around. But he turn, like, around. I see when he --
4 boom. He put on the floor.

5 Q. Okay.

6 A. Yeah. He tried to grab it because it was
7 more people right there in -- in the sides because
8 we -- we a big family. Was a lot of cousins, lot of
9 friends.

10 Q. Uh-huh.

11 A. We was, like, too crowded when he went to get
12 Benjamin, to grab Benjamin.

13 Q. Was anyone -- was Benjamin standing by
14 himself? I mean, when I say "by himself," was there
15 anybody within a few feet of him?

16 A. Cops and -- almost all cops --

17 Q. Okay.

18 A. -- really.

19 Q. But none of your other family members?

20 A. Yeah, my family members. But when cops
21 approached, they move -- move out of the way.

22 Q. Okay. And you said the officer then, I
23 guess, turned Benjamin around and put him on the
24 ground?

25 A. The ground.

1 Q. Okay. And when the officer put Benjamin on
2 the ground, how did Benjamin land on the ground? Did
3 he land on his knees? Did he land flat on the ground?

4 A. Flat in the ground.

5 Q. Okay. And when Benjamin landed on the
6 ground, what -- where was the officer?

7 A. On top of him.

8 Q. Okay. Was he -- was he laying on top of him?

9 A. Yeah. He was putting the handcuffs on top of
10 him.

11 Q. Okay. So he -- the officer was on top of
12 Benjamin, had his hands pulled behind his back?

13 A. Pulled with him, yeah.

14 Q. Okay. Could you hear what the officer --
15 what that officer was saying to Benjamin?

16 A. No. I don't remember. I just remember
17 Benjamin saying "Ahhh" -- scream.

18 Q. Okay.

19 A. And then Miguel was inside, like, "Leave my
20 brother alone."

21 Q. Okay. So how far away from Benjamin were you
22 when this happened, when the officer grabbed him and
23 put him down?

24 A. A couple feet, uh-huh.

25 Q. Okay. And you then heard Miguel -- well,

1 A. Strike?

2 Q. Hit him.

3 A. No. I don't remember. He went -- grab him
4 like -- like -- like -- like a funny thing he do, like
5 with the elbow. But he got it for right here
6 (indicating) so that, like, maybe hold it right there
7 (indicating), grab it like that (indicating) to pull
8 it. But he got it -- he did a tricky move, really.

9 Q. Okay. So he grabbed him somehow in this
10 area?

11 A. In this area he grab him (indicating).

12 Q. And then what about the elbow?

13 A. Then when the -- then when he -- he went like
14 that (indicating).

15 Q. Okay. What did he do with his elbow? What
16 did Officer Alcantar -- you're talking about
17 Officer Alcantar's elbow?

18 A. Officer Alcantar elbow.

19 Q. And what did he do with his elbow?

20 A. He grab it and, like, pull Benjamin like that
21 (indicating). He grab his hand. He do something like
22 that. That's what I remember.

23 Q. Okay. Did Officer Alcantar's elbow strike
24 Benjamin -- hit him?

25 A. Yeah.

1 Q. Okay. Where did it hit him?

2 A. Like around here (indicating). I really
3 don't -- I see it. But, like, I was -- I don't see
4 where he hit.

5 Q. Okay. So you -- so someplace on the side of
6 Benjamin's neck area?

7 A. Uh-huh.

8 Q. Okay. And you saw the elbow -- is it -- was
9 it the elbow of the same hand that was holding his --
10 the front of his neck area, in this area?

11 A. I don't remember, really.

12 Q. Okay. Okay. Did you -- after the officers
13 released Benjamin and Miguel, you said you were
14 talking to them for awhile?

15 A. Uh-huh.

16 Q. You were all talking as a group for awhile?

17 A. Yeah.

18 Q. Did you notice any marks on Benjamin?

19 A. Yeah, right here on the -- on the neck
20 (indicating). He was showing us, like, "Check it
21 out." And then Miguel show us how -- how he put the
22 handcuffs, how he tied to him -- to Miguel.

23 Q. Okay. So Benjamin was showing you the marks
24 on his neck --

25 A. The neck.

1 strike that.

2 When the officer -- how was -- what position
3 was the officer in when he put the handcuffs on
4 Benjamin?

5 A. What position?

6 Q. Yeah. I mean, was he laying on him? Was he
7 kneeling next to him? Was he kneeling on him? If you
8 could describe --

9 A. He was, like, on top of him. He wasn't
10 laying in the floor. He was putting the handcuffs on
11 top of him.

12 Q. Okay. So he wasn't lying flat on his back on
13 top of Benjamin -- on top of Benjamin's back?

14 A. I don't remember.

15 Q. Okay.

16 A. Maybe he got his kneecaps to put it like --
17 but he was on top of Benjamin.

18 Q. Okay. Now, you said that you heard Miguel
19 yell something like "Leave my brother alone" --

20 A. Yeah.

21 Q. -- or something like that. When you heard
22 Miguel say that, do you know where he was at that
23 point?

24 A. Miguel?

25 Q. Yeah.

1 A. He was inside the door. He --

2 Q. So he was still inside the house?

3 A. When he say that, he was like -- he was open,
4 like, "Leave my brother alone." He open the door --

5 Q. Okay.

6 A. -- to go see, you know, the -- where he was
7 to see his brother right there on the floor.

8 Q. Okay. So he said something like "Leave my
9 brother alone." And he opened the door and started to
10 come out of the house?

11 A. Yeah.

12 Q. Okay. And what did you observe happen at
13 that point with Miguel?

14 A. A big officer grabbing like (indicating) --
15 to the floor.

16 Q. Okay. So an officer grabbed Miguel?

17 A. Uh-huh.

18 Q. Where exactly was Miguel when the officer
19 grabbed him, if you remember?

20 A. He was on the porch, like, coming down the
21 stairwell -- in the stairs.

22 Q. So he was coming down the stairs of the front
23 porch?

24 A. We can say like that.

25 Q. And how many steps are there?

1 A. I don't remember exactly the stairs, but like
2 five or six.

3 Q. Okay. That's fair.

4 And when that officer -- do you know which
5 officer it was that grabbed him?

6 A. (Witness shakes head.)

7 Q. Do you remember if it was the officer that
8 had been in the car with the other officer that was at
9 the corner?

10 A. I don't remember, really.

11 Q. Okay.

12 A. Because it was -- it was -- that officer was
13 another big black tough officer.

14 Q. Okay.

15 A. And when he dropped Miguel, the black officer
16 pulled the extension gun, the -- the -- the -- like
17 to -- electric gun. Put like that to him
18 (indicating).

19 Q. Okay. So it was a black officer that grabbed
20 Miguel?

21 A. Like, I think -- really, I don't know the --
22 like to answer your question --

23 Q. Uh-huh.

24 A. -- because everybody was too close. When
25 I -- they grab -- I think the big black officer grab

1 him.

2 Q. Okay. And I'm sorry if I asked you this
3 already. But how far away from -- well, how far away
4 from you were -- how far away were you from where they
5 grabbed Miguel?

6 A. Couple feet.

7 Q. Couple feet.

8 So you're fairly close?

9 A. Fairly close.

10 Q. Okay. And when they grabbed Miguel, this
11 officer grabbed Miguel, what did they do with Miguel?

12 A. They grabbed Miguel. And then they put
13 handcuffs. They put him in back of patrol car.

14 Q. Okay. Did they -- did Miguel -- did they
15 knock Miguel to the ground?

16 A. Yeah.

17 Q. Okay. So they grabbed him and knocked him to
18 the ground?

19 A. Yeah.

20 Q. Okay. And what did they do when they knocked
21 Miguel to the ground?

22 A. They put -- they put the handcuffs, the --
23 the plastic gun, the electric gun to right here
24 (indicating).

25 Q. Okay.

1 A. And then they pick Miguel and take him to
2 patrol car.

3 Q. Okay. So they put him -- so Miguel went to
4 the ground. They cuffed him. They --

5 A. Cuff.

6 Q. -- put handcuffs on him while he was on the
7 ground?

8 A. Uh-huh.

9 Q. Was -- what was Miguel doing while they were
10 doing this?

11 A. Miguel?

12 Q. Yeah.

13 A. Nothing.

14 Q. Okay. And then you said this officer that
15 grabbed him -- now, the officer that grabbed him, did
16 you observe the officers put handcuffs on Miguel?

17 A. Yes.

18 Q. Okay. Do you remember -- was it -- which
19 officer put handcuffs on Miguel? Was it the one that
20 grabbed him?

21 A. I really don't remember.

22 Q. Okay. Now, you said an officer also put a
23 taser gun.

24 A. Taser gun.

25 Q. Is that correct?

1 A. Yeah.

2 Q. To where did they put it on Miguel? What
3 part of his body?

4 A. Right here back in the head (indicating). It
5 was the big, tall guy -- black guy.

6 Q. So the -- was it the same officer that
7 grabbed Miguel?

8 A. Uh-huh.

9 Q. Okay. So he put a taser to the back --

10 A. Taser.

11 Q. -- of his neck?

12 A. Yeah.

13 Q. Okay. Did you hear that officer say anything
14 to Miguel?

15 A. Nah. I don't remember because I was talking
16 to Guerrero, the other officer right there. Like, I
17 was moving back. I was right there by the driveway.
18 He's like couple feet when -- where the stairwell
19 house, the front yard.

20 Q. Now -- okay. Going back to Benjamin then.
21 So after the officers handcuffed him, what did they do
22 with Benjamin?

23 A. Take him back to the police car.

24 Q. Okay. Could you hear Benjamin saying
25 anything at this point?

1 A. He just was like "Ahhh." Like it hurts or
2 something.

3 Q. And how far away from Benjamin were you when
4 they -- well, did the officers pick Benjamin up off
5 the ground?

6 A. Yeah.

7 Q. Okay. And how far were you away from
8 Benjamin at this point?

9 A. I still was like five, seven feet because the
10 house is not that big where I was standing.

11 Q. Okay.

12 A. I was standing right there by -- by the
13 cars -- the house right there on the driveway. The
14 cars is like -- the house is right there, close to the
15 cars right there. I was standing right there.

16 Q. Okay. And whose car -- do you remember whose
17 cars were parked in the driveway?

18 A. Yeah, my car, my black car.

19 Q. Okay. So -- and the officers then took
20 Benjamin to the patrol car, you said?

21 A. Uh-huh.

22 Q. Okay. And which -- do you remember which
23 patrol car it was?

24 A. The two officers' car.

25 Q. The one that had talked to Benjamin at the

1 corner?

2 A. Yeah.

3 Q. Okay. And they put Benjamin -- was it the
4 same officer that had cuffed him that put him in the
5 patrol car?

6 A. Yeah.

7 Q. Do you remember?

8 A. I don't remember. But the guys who was
9 driving the -- that police car --

10 Q. Uh-huh.

11 A. -- put Miguel and Benjamin in the car.

12 Q. Okay. So the two officers that were -- had
13 been in the car that had talked to Benjamin at the
14 corner are the two officers that put Benjamin and
15 Miguel in the back of their car?

16 A. Back of the car.

17 Q. Okay. Fair enough.

18 Now, the officer that cuffed Benjamin -- you
19 said took him to the ground and cuffed him?

20 A. Uh-huh.

21 Q. Was that Officer Alcantar?

22 A. Yeah.

23 Q. Okay. And had he been the driver or the
24 passenger of the car, if you remember?

25 A. I remember he was the -- the passenger.

1 Q. And when did you start talking to
2 Officer Guerrero? Was it before or after the --
3 Benjamin and Miguel were caught?

4 A. Right there -- when the other thing happened,
5 I was talking to him, like, "That's messed up what
6 they do. He's just a little boy." Guerrero -- the --
7 "But we going to sue Alcantar because that -- that --
8 like" -- I can say bad word?

9 Q. Sure.

10 A. "That's bullshit what they doing to little
11 kid, you know."

12 Q. And was this before they handcuffed Benjamin
13 or after?

14 A. After he handcuff, like...

15 Q. Okay. What did Officer Guerrero say, if
16 anything?

17 A. I don't remember. And then I told Guerrero
18 "I want the badge number of the police officer."

19 Q. Okay.

20 A. And then I ask him later for -- like when he
21 approach to me "Can I have information -- your name?"
22 He say "You not can read my name" or something like
23 "Can I have your badge number," something like that.

24 Q. Uh-huh.

25 A. And then I read right there "Alcantar." And

1 A. We stay right there.

2 Q. Okay. So you stayed in the yard?

3 A. In the yard.

4 Q. Okay. How long were Benjamin and Miguel in
5 the backseat of the patrol car for, if you remember?

6 A. I remember not exactly. It was like a half
7 hour and like something like that.

8 Q. Okay.

9 A. They was there in the police car.

10 Q. And were you in the yard the whole time they
11 were in the back of the patrol car?

12 A. Yeah.

13 Q. Okay. And what were you doing while they
14 were in the back of the patrol car?

15 A. Nothing. Talking to my cousins, everything.
16 We was like -- because when they put Benjamin and
17 Miguel to the police car, police like start going
18 away. Like they say "We come back. We going to
19 arrest you guys go be here." They started leaving.

20 And then Alcantar in the car, they was there.
21 They went to talk to Miguel. They was there for a
22 good minute, like half hour, 25. We was in front of
23 the house still.

24 Q. Okay. Now, you said that the officers
25 started leaving?

1 Q. -- front and the side of his neck?

2 A. Yeah. And his hands started, like, hurting.

3 He said "My hands hurt."

4 Q. His hands hurt?

5 A. Like his hand, one of his hands, the hand the
6 officer grab --

7 Q. Okay.

8 A. -- the whole hand (indicating).

9 Q. The arm? You're talking about the arm?

10 A. Yeah, the arm, the arm.

11 Q. Okay.

12 A. I call hand the whole thing. The arm was
13 like -- it hurt.

14 Q. Okay.

15 A. He got, like, pain.

16 Q. And did he show you any marks on his arm --

17 A. No.

18 Q. -- if you remember?

19 A. No.

20 Q. Okay. So he shows you marks on the front and
21 the side of his neck?

22 A. Right here (indicating). Red -- first was
23 like red, you know, like, when somebody just grab you,
24 like bruises right there. They -- he show us, like...

25 Q. Okay. Did you notice any blood on Benjamin?

1 A. Yeah.

2 MR. JACOBSEN: Question's vague.

3 MR. HIGA: Q. If you understand the
4 question, you can answer.

5 A. Because all my cousin was talking same thing.
6 Everybody was, like, talking. I was talking to
7 Miguel, to Benjamin, to my other cousin, to Javier,
8 and then talking to -- to my girl. My girl was there,
9 too, like -- "They're fucking animals," something like
10 that in Spanish. She was saying all that thing to me
11 and "You see how they are," thing like that. We was
12 talking conversation, what happened.

13 Q. And so everybody was talking to each other?

14 A. Yeah.

15 Q. Everyone was there?

16 A. Yeah.

17 Q. Okay. You know, you said you saw a mark on
18 Benjamin's neck?

19 A. It was, like, red at first. It was not like
20 a dark mark. It was like -- like his neck, like, red.

21 Q. Like, was it like someone scratched it or
22 just like someone had touched it?

23 A. You know when they hit you, like something
24 is, like, getting, like -- it first look like red.
25 You know how hickeys turn, you know? When you go

1 to -- first is like red. Then it was, like, red
2 first, like...

3 Q. Okay. You said "at first." Did it change --
4 the mark on his neck?

5 A. I don't see it 'til the next day. It change.

6 Q. Okay. So you didn't still -- it was gone by
7 the next day?

8 A. No. The next day he got it -- getting dark.

9 Q. Okay.

10 A. You see, first day, you know, it was like a
11 reddish, sore feeling. And then the next day I see
12 how his mark was right here (indicating). I say,
13 "They got you good, boy."

14 Q. Okay.

15 A. I was talking to him, you know, how we talk,
16 you know.

17 Q. It's your cousin, yeah.

18 A. My cousin.

19 Q. Was it raised? Did you see any bumps or
20 anything like that, or it was just a red mark?

21 A. Like a red mark. I really don't remember. I
22 remember it was -- it get dark, then like that.

23 MR. HIGA: That's all I have. Thank you.

24 MR. VOSE: That's all I have.

25 MR. JACOBSEN: I'd like to have this marked

1 A. There was no blood. No blood.

2 Q. Did Miguel have any marks on him, if you
3 remember?

4 A. Just the handcuffs on his hands, right here
5 (indicating).

6 Q. So on his wrists?

7 A. On his wrists. The mark was right there
8 (indicating), how tight the handcuffs was.

9 MR. VOSE: Okay. Jim, want to ask questions?

10 MR. HIGA: Sure.

11

12 EXAMINATION BY MR. HIGA

13 MR. HIGA: Q. So my name is James Higa, and
14 I represent Officer Alcantar in this case. And I just
15 have a few follow-up questions to ask you. Okay?

16 A. Okay.

17 Q. Not too many. It's not going to take too
18 long. All right.

19 A. Yeah.

20 Q. I think you testified earlier that Miguel
21 arrived at your house at around noon or something on
22 that day.

23 A. Yeah.

24 Q. Is that right?

25 A. That is right.

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5

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10

11 RE: MIGUEL ORTEGA, BENJAMIN ORTEGA, A Minor, By And

12 Through His Guardian Ad Litem, ANA ROSA ORTEGA vs.

13 CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT, WAYNE
14 TUCKER, In His Capacity As The Police Chief Of The
15 City Of Oakland, RAMON J. ALCANTAR, Individually And
In His Capacity As A Police Officer For The City Of
Oakland, Does 1 through 200

16

DATE OF DEPOSITION: April 22, 2008

17

18 Your deposition transcript is available at this office
19 or through your attorney. If you have not read,
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corrected, and signed. You may contact this office at
(415) 362-4346.

22

23

24 Very truly yours,
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25 cc: ALL COUNSEL PRESENT

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